

B.J. ALAN COMPANY

Distributors of Phantom® and Wolf Pack® Brand Fireworks

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Testimony of Danial P. Peart

Michigan Senate Committee on Regulatory and Reform

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Good morning, Mr. Chairman and members of the committee. My name is Danial Peart, Director of Retail Operations for Phantom Fireworks, one of the nation's leading retailers of 1.4g consumer fireworks. I am honored to be here today to be able to share with you our thoughts on the pending House Bill No. 4293, *The Michigan Fireworks Safety Act*.

At the outset, let me emphasize that Phantom Fireworks unequivocally supports the expansion of the types of consumer fireworks to be permitted to be sold and used in Michigan. Our one and only reservation is that the methodology employed to transport, store and display the products for retail sale is done in the safest manner possible. The primary focus of this legislation should be to make fireworks sales in Michigan as safe as possible for the sellers, purchasers and users of the products as well as the uninvolved Michiganders, while also generating additional revenue for the state of Michigan.

This bill currently provides for an unfettered and unrestricted application of retail sales in all traditional consumer fireworks sales venues; temporary tents and stands, permanent showroom-type units and big box, mixed-mercantile retail establishments such as a Wal-Mart or a grocery store. For a state such as Michigan which currently only permits ground based, or "low impact" type consumer fireworks to be sold across the majority of the state, this is a quantum leap in terms of expanded legislation. For those familiar with the fireworks industry's recent legislative advancements across the country, this is simply unheard of and puts Michigan in the position of adopting the most far reaching and dangerous fireworks legislation in the United States.

I'd like to point out some areas of the proposed legislation that, if nothing else, deserve to be fully explained and considered before any final voting takes place.

Inspections

Section 4 states that, *A person shall not sell consumer fireworks unless the person annually obtains a consumer fireworks certificate from the bureau under this section.*

This section then goes on to state the penalty for not obtaining a permit, while the subsections detail the necessary provisions of the application process itself.

Nowhere is an inspection of the proposed sales location required to ensure compliance with all applicable local, state and federal building and fire codes as part of the process in obtaining a fireworks certificate. In fact, the word "inspection" is not even mentioned until Section 19, *The bureau may delegate authority and responsibility to carry out inspections and other duties under this act.*

A fireworks certificate can be granted without a single enforcement official ever visiting a new property, or a certificate can be renewed without ever ensuring that any significant or structural changes to the premise have occurred. This does not provide for even a minimum amount of enforcement or safety regulation or code compliance.

Felony Provisions

Section 4 (8) The Bureau shall not issue a consumer fireworks certificate to either of the following:...(b) An individual who has been convicted of a felony involving theft, fraud, or arson.

Most states that have a felony provision do not specify what level or type of felony warrants the determination of lack of competence to hold a fireworks certificate, or many other licenses or designations, for that matter. Someone who is guilty of theft cannot hold a fireworks license, but a murderer can? That doesn't make sense.

Fire Supression

Section 5. (1) Consumer Fireworks shall only be sold from a retail location if all of the following applicable conditions are met:

- (a) Except as provided in subdivision (b), a retail location satisfies the applicable requirements of NFPA 101 and NFPA 1124 not in conflict with this act.*
- (b) Beginning 1 year after the effective date of this act, a permanent building or structure shall be equipped with a fire suppression system in compliance with NFPA 1124*

One must ask why we're providing potentially tens of thousands of dollars in relief from the basic life safety building feature of a sprinkler implicitly required in the aforementioned code, for no other reason than time relative to passage? Sprinklers should absolutely be required with no time delay. Since fireworks businesses do not now exist in most of Michigan, there will be no harm to anyone by requiring sprinklers from the outset.

Insurance Requirements

Section 5 (3) reads, During periods when consumer fireworks are sold, each retail location selling consumer fireworks either shall be added as an additional insured, or public liability and product liability insurance coverage shall be obtained and maintained, in an amount not less than \$10,000,000.00 per occurrence. A person that knows, or should know, that he or she is required to comply with this subsection and who fails or neglects to do is liable for a civil fine of not more than \$5,000.00

Put aside the fact that in my almost 10 years of being in the consumer firework business, I know of only three or four organizations that carry a policy with this high a limit, and one of them doesn't even sell in tents. The maximum penalty for non-compliance is significantly less than the cost of the policy premium itself. This requirement attempts to restrict access to only the largest of companies in the fireworks industry, while at the same time creating an environment that breeds, if not forces non-compliance. Our company carries this much insurance and would not be affected by his provision. Most fireworks sellers would be.

Full Line Tent Sales-Safety

Tents have no fire suppression systems and no shelving system to allow for the restraint of aerial products in the event of inadvertent ignition. For instance, NFPA 1124 §7.3.15.6 specifically requires that aerial devices in a consumer fireworks retail sales facility "be packaged and displayed for sale in a manner that will limit travel distance of ejected pyrotechnic components if ignition of the fireworks occurs."

Tents do not have a system to provide for such restraint of aerial devices, which makes a fire in a fireworks tent particularly dangerous. Because the canvas tent will burn through quickly as compared to a roof system, a fire in a tent will definitely result in aerial fireworks discharging and traveling substantial distances from the tent. If an aerial product is designed to climb 125-150 feet straight up, imagine the additional distance if the trajectory of the flaming product is of an arcing linear type.

The danger to adjacent structures, vehicles and people would be significant, especially considering the most popular and common tent locations are in the parking lot or immediate vicinity of extreme high traffic areas, such as big box chain stores, malls, strip plazas and gas stations. Patrons of these establishments may not be familiar with the inherent risk that visiting a full line consumer fireworks retail sales facility presents, or even be aware that they are exposed to such a risk while visiting one of these neighboring, non-fireworks associated establishments.

Tents will also not have computerized check-out and information retention systems, video camera surveillance, intrusion and fire alarm systems, etc. The advantage to storage and sale of these highly flammable products in permanent, sprinklered buildings is obvious.

Limitation of sales in tent and other temporary venue to ground-based fireworks products is the norm in most other states. Many states, like Ohio, permit the sale of fireworks only in permanent buildings and do not allow tent sales at all. Pennsylvania is an example of a state that permits the sale of aerial and other full-line fireworks only in permanent buildings and limit tents and other temporary venue sales to ground-based products only.

Full Line Tent Sales-Permanent Facilities

The unrestricted sale of full-line consumer fireworks products in tents will take away all of the incentive anyone might have to invest in Michigan with full-line consumer fireworks permanent buildings, which have proven to be the safest venue from which to sell these products.

Our company, for instance, would have no reason to invest in excess of one million dollars to build or renovate a permanent facility to house a consumer fireworks showroom.

It would make no sense to invest this much money in a permanent building with a fire suppression system, smoke evacuation system and the other safety features the occupancy would require, when a competitor, with virtually no expense to speak of, can open a full-line consumer fireworks tent next door or right across the street from the permanent facility.

This legislation permitting the full-line sales of fireworks in tents would not create any significant investment in Michigan by well-established retailers like Phantom Fireworks or Shelton Fireworks.

Full Line Tent Sales-Control

There will likely be an unexpected number of tents springing up all over the state, a good number of which will be operated by well-intentioned companies that can be relied on to know and follow the law. Unfortunately, there will be a certain number of operators who, either out of ignorance of the details of the law, building and fire codes, or with purpose aforethought, will violate the law.

Violations will range from minor fire or building code violations to failure to remit sales tax, to illegal sale of over-loaded or otherwise illegal explosives. This presents the potential of financial loss and physical danger to the citizens of Michigan.

Full Line Tent Sales-Enforcement

Kentucky just opened to the sale of aerial consumer fireworks for the July, 2011 season. Enforcement was next to impossible. The state Fire Marshal did not have the staff, manpower or expertise to police all of the tents that sprung up, literally, all over the state. Enforcement was non-existent, resulting in no control or oversight of the fireworks sales venues or products sold.

Indiana shares a similar experience since their expanded fireworks legislation in 2006. The Department of Homeland Security, the agency charged with oversight and enforcement of fireworks in Indiana, freely admits that they do not have the manpower, nor the resources to inspect and police the litany of tents, both permitted and non-permitted, that spring up every year.

Also worth pointing out is that when Indiana expanded their fireworks legislation in 2006, they did not allow the sale of aerial fireworks in any tent, temporary or mixed mercantile unit other than grandfathering the few existing licenses at that time. Homeland Security will also admit that each year tents open up without a full line, aerial permit, while still selling these items in temporary structures without any of the minimal safety features a tents should have. While in Indiana, discovery and seizure of fireworks in violation of the laws set forth in the Indiana fireworks act is the responsibility of local law enforcement, there is both hesitation and reluctance to take action against violators of the law, due to vague rulemaking authority and lack of storage at the local level where enforcement duties are left.

Full Line Tent Sales-Knowledge of the Law

The reliable tent companies will follow the rules and all applicable laws. They will actually set the standard for compliance with federal, state and local law. The problem will be the myriad number of individual operators who will run tents or stands based on what, if anything, they are "told" by their suppliers. Some of the fireworks sellers won't even know the products they are selling, let alone know the occupancy, sales and product laws.

It is fair to point out that the overwhelming majority of tent operators are not full time fireworks employees, but are mostly those looking for a hard work, short time period, high reward financial opportunity. There is currently no

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mandatory training for any employee working in a consumer fireworks retail sales facility in this bill.

Full Line Tent Sales-Sales and Fireworks Tax

There is a significant problem in many states with coordination between the entity that issues the fireworks sales permits and the sales tax authority. All too often, by the time the state agency attempts to contact or collect tax from the fireworks seller, the seller is absent.

Nothing in the proposed law prevents non-resident individuals or entities from conducting fireworks sales in Michigan. Getting sales tax returns filed and the proper tax paid from many out-of-state, transient sellers could prove to be very problematical.

The additional one percent (1%) charged on the fireworks tax [6% paid on sales from temporary sales venues; 5% paid on sales from permanent sales venues] is hardly sufficient to pay the cost of administration and collection of the fireworks tax and sales tax from non-compliant, in-state or out-of-state sellers.

The time has come for Michigan to permit the sale of the full-line of consumer fireworks. However at the same time, it would be reckless to allow the sale of these products without appropriate reflection and time spent on concurrently adopting a set of standards, regulations and guidelines that will assure the level of safety to which all Michiganders are entitled. They are not just entitled to the highest level of safety, but are owed that in the adoption of this legislation. As constituted, this legislation fails to provide the highest level of safety possible.

Thank you for your time and courtesies.

Respectfully,

Danial P. Peart

